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Paper No. 17

HRW

11/29/00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re United Vitamin Manufacturing Corp.

Serial No. 75/246,892

Olga Gonzalez for United Vitamin Manufacturing Corp.

Barney L. Charlon, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Wendel, Bottorff and Holtzman, Administrative
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

United Vitamin Manufacturing Corp. has filed an
application to register the mark COMPLETE for "vitamins,
minerals and nutritional supplements sold in solid tablet
form through retail establishments."¹

Registration has been finally refused on the ground
that the mark is merely descriptive under Section 2(e)(1)
of the Trademark Act. The final refusal was appealed and

¹ Serial No. 75/246,892, filed February 24, 1997, claiming first
use dates of August 21, 1996.

both applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

The Examining Attorney maintains that the mark COMPLETE merely describes a characteristic or feature of applicant's goods, in that the term "complete" is recognized in the dietary supplement industry as a "term of art" for supplements which contain a full complement of vitamins and minerals. He points out that, from the specimens of record, it is clear that applicant's goods are of this type, being labeled as a "Multi-Vitamin & Multi-Mineral Formula." As support for his position, the Examining Attorney has made of evidence both Nexis excerpts and Internet printouts showing use of the term "complete" to describe dietary supplements of this nature. For example, we note

You may be surprised to find that some multis which claim to be "complete" contain vitamins only, or have just a few vitamins and minerals. But the more of the following nine nutrients a multi contains in levels close to those recommended by experts, the more complete it is. *The Sunday Gazette Mail* (November 23, 1997;

... family history of heart disease. These factors help determine my regime. I take an inexpensive brand of a complete vitamin/mineral supplement several times per week, and I take ... *Portland Press Herald* (April 15, 1998);

... This brand is similar to Centrum in that it is a premium product that is marketed as a "complete" supplement. Multivitamin + mineral supplements are in fact almost as popular as multivitamins on their own, and there is a growing trend towards these products. *OTC News & Market Report* (November 1998);

... offer these vitamins and minerals in our diet, but often a normal portion of these are insufficient to fulfill our daily needs. That is why a complete vitamin and mineral supplement is recommended to make sure ... *The Jupiter Courier* (May 19, 1999).

Applicant contends that this evidence shows nothing more than use of the word "complete" in advertising or journalism copy; that it does not show use of "complete" as a term of art or that it has a definite meaning in the dietary supplement industry. Applicant argues that its mark COMPLETE represents a broad, abstract concept and does not immediately convey information with respect to applicant's goods. Applicant points to several third-party registrations on the Principal Register for the mark COMPLETE for various goods as evidence of its capability of being recognized as a trademark.

A term or phrase is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys information about a characteristic or feature of the goods with which it is being used. Whether or not a particular term is merely descriptive is not determined in the abstract, but rather in relation to the goods for which

registration is sought, the context in which the mark is being used, and the significance the mark is likely to have, because of the manner in which it is used, to the average purchaser as he encounters the goods bearing the mark. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that the term or phrase describe all the characteristics or features of the goods in order to be merely descriptive; it is sufficient if the term describes one significant attribute thereof. See *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

We find the Examining Attorney's evidence adequate to establish that the term "complete" is frequently used to describe a dietary supplement containing a full complement of vitamins and minerals. While we do not find the evidence sufficient to show that "complete" is a "term of art" in the dietary supplement field, as argued by the Examining Attorney, we do not consider such a level of usage necessary in order to find the term merely descriptive of applicant's goods. A term is merely descriptive within the meaning of Section 2(e)(1) so long as it immediately conveys information about a characteristic or feature of the goods to potential purchasers. The question is the significance of COMPLETE

to ordinary purchasers upon encountering the mark being used in connection with applicant's supplements.

We have no doubt that these purchasers would immediately perceive the term COMPLETE as an indication of the multi-vitamin, multi-mineral content of the supplements. The ordinary dictionary meaning of the term "complete," as including all the essential components, is clearly applicable to a product of this nature.² Moreover, the evidence shows that the term has been used by others in connection with dietary supplements with this connotation. The manner in which applicant uses the term on its labels, directly above the words "High Potency Multi-Vitamin & Multi-Mineral Formula," only reinforces the interpretation of COMPLETE as a descriptor of the all-inclusive content of this particular supplement.

Insofar as the third-party registrations cited by applicant are concerned, COMPLETE is being used as a mark therein with totally different goods or services, ranging from furniture polish to banking services. The issue of descriptiveness must be determined with respect to the goods for which registration is sought, not in the

² We take judicial notice of the following dictionary definition:
complete 1a. possessing all necessary parts, items,
 components, or elements : not lacking anything
 necessary *Webster's Third New International*
 Dictionary (1993).

abstract. Thus, the fact that the same mark may have been registered for other goods or services is irrelevant to the present determination. Furthermore, the question before us is not whether the term COMPLETE, as being used by applicant, is capable of functioning as a trademark, but rather whether it is merely descriptive and, thus, registrable only if applicant is able to establish acquired distinctiveness under the provisions of Section 2(f).

Accordingly, we find the term COMPLETE, when used in connection with applicant's vitamins, minerals, and nutritional supplements, merely descriptive.

Decision: The refusal to register under Section 2(e)(1) is affirmed.

H. R. Wendel

C. M. Bottorff

T. E. Holtzman

Administrative Trademark Judges,
Trademark Trial and Appeal Board